accords with the real justice of the case. In one count the jury have found that the plaintiffs in error caused the officers of the bank to violate the statute, and then threatened them with a great number of actions for penalties (amounting in the aggregate to $20,000), unless they would pay the sum of $3000 to the conspirators. In another count the jury have found, that the plaintiffs in error actually offered, for the sum of $3000, to bind themselves against bringing any action for penalties, and "to tear up, burn and destroy" the evidences of fourteen violations of the law, in which the penalties amounted to the sum of $70,000. These facts show that their object was not the detection and punishment of offenders, but the promotion of their own corrupt gain, and that to accomplish their purposes, they entered into a combination to prostitute the law and its process. It is plain that they sought to extort "*hush money*" for suppressing the evidences of guilt, and thus defeating the object and policy of the statute. Their proceedings, as spread upon the record, have not the least mark of a *bona fide* prosecution in support of the policy of the law. Those who bring offenders to punishment, are entitled to a share of rewards offered, because they render their services to the public in suppressing the mischief. But those who induce a violation of the law for the purpose of compounding the offence, and making gain by defeating public justice, are guilty of a gross public wrong. A conspiracy to effect such an object is clearly indictable. The judgment of the Court of Quarter Sessions is affirmed.

Common Pleas of Wayne County, Pennsylvania, March, 1854.

BUCKLEY BEARDSLEY VS. THE HONESDALE AND DELAWARE PLANK ROAD COMPANY.

In any case where damages would have been recoverable at Common Law, the plaintiff is entitled to costs, notwithstanding that a new and different mode of proceeding has been introduced by Statute. Therefore, under the general Plank Road Act of Pennsylvania, of 7th April, 1849, which provides for the assessment of damages under the Act by freeholders, upon which assessment judgment is to be entered before a Justice of the Peace, with an appeal, as in ordinary cases, a plaintiff, succeeding in an appeal, is entitled to costs.

Rule to show cause why judgment should not be entered without costs.

The opininion of the Court was delivered by

PORTER, P. J.—This was a proceeding instituted before a justice of the peace, by the plaintiff, to recover from the defendant damages for the making and constructing of a plank road through his lands in Wayne county, in which the viewers had found a certain amount of damages, from which both parties appealed, and on trial in the Court of Common Pleas, the plaintiff recovered a larger verdict than that given by the viewers, before the justice of the peace. And the question is, whether the plaintiff is entitled to recover costs.

The proceeding was instituted under the "Act regulating turnpike and plank road companies," passed 26th January, 1849, and the supplement thereto, passed 7th April, 1849. These acts provide that if the parties cannot agree (as to the amends for damages) a just assessment shall be made, upon oath or affirmation, by three disinterested freeholders, (to be appointed as therein directed,) if the parties can agree, or if either party, after due notice, shall neglect or refuse to join in the choice, then to be chosen by a justice of the peace of the county wherein the land lies. These freeholders are to "reduce their assessment to writing, signed by them, and within four days thereafter, deliver the same to any justice of the peace of the county where the land lies, who shall enter judgment thereon, from which said judgment either party may appeal within twenty days from the entry thereof, to the Court of Common Pleas of the proper county, *to be determined as other cases of appeal from judgments of justices of the peace.*"

These laws do not, in express terms, mention the subjects of costs, whilst the general railroad law, passed 19th February, 1849, Sec. 11, has a provision for the recovery of costs, and for the issuing of execution to collect the amount assessed, with costs. As costs are entirely the creatures of statutory provisions, it is contended by the defendants that no costs are recoverable. The plaintiff contends that under the statute of Gloucester, the plaintiff is entitled to costs wherever he recovers damages, and that the act of 7th April, 1849, provides that appeals in cases like the present, are "to be deter-

mined as other cases of appeals from judgments of justices of the peace," and as the act of 9th April, 1833 (Brightly, 487), provides that "the costs on appeals from justices of the peace shall abide the event of the suit, and be paid by the unsuccessful party, as in other cases," the plaintiff is entitled to recover costs with his damages in this case.

We have not been able to find any case in which the question of costs in cases of plank roads has been adjudicated, but several cases have been cited in the argument in relation to cases of railroads and canals.

It has been said that the Statute of Gloucester, 6 Edw. 1, c 1, Roberts' Dig. 107, was the first that gave costs. But this is a mistake. They were given by the Statute of Marlbridge, c. 6, (52 Hen. 3,) not reputed to be in force in Pennsylvania. The Statute of Gloucester modified and extended the provisions of that previous statute. Although costs were not recoverable, *eo nomine*, at the common law, still the successful party got what was about the same thing. It was usual for the justices in *eyre* in their *iters* to make a compensation to plaintiff, who had obtained a verdict, for the expenses sustained in carrying on his suit, and the damages were so assessed as to cover the expenses. Sayer, 1, 2d Inst. 233, Gilb. H. C. P. 266. But the statute of Gloucester, after giving costs in certain actions, declares generally, that they shall be recovered wherever damages are recovered.

Under the Statute of Gloucester it has been held in several cases that the plaintiff is entitled to costs in all cases where damages are given by statute to the party aggrieved, although costs be not mentioned in such statute. Thus in *Witham* vs. *Hill et al.*, 2 Wils. 91, where an action was brought against the hundred for demolishing houses and barns, upon the first Geo. 1, ch. 5, by which it is directed that the inhabitants of the hundred shall yield damages to the person damnified by such demolishing, to be levied upon the inhabitants and paid to the plaintiff by such ways as are provided by the 27th Eliz., ch. 13, (for re-embursing money recovered against a hundred by a person robbed.) There was a verdict for the plaintiff, with damages, no mention being made of costs, in 1 Geo. 1, ch. 5. The

question was whether the plaintiffs ought to have costs, and it was holden that he ought, and by Willes, C. J. "the plaintiff is entitled to costs under the statute of Gloucester, the words of which are 'That this act shall hold place in all cases wherein a man recovered damages.' The words in that statute 'in all cases' do, in my opinion, extend to every action at the common law, and to every action upon any statute antecedent or subsequent to the statute of Gloucester, wherever damages are recovered." The distinction taken by the Court in that case, between the cases in which damages were not recoverable before the making of the statute, and a case in which damages are not thereby given, (as was *Pelford's Case*, 10 Coke, 116,) and the cases in which the statute authorizes a new mode of proceeding, or renders additional persons liable, where the party is entitled to damages for the injury sustained, is well put by C. J. Willes, and by Justices Bathurst and Noel, in the cases cited in *Witham* vs. *Hill et al.* above cited, as well as in a number of other cases cited in Sayer, 10, 11 and 12.

In the present case, it is not to be questioned that the plaintiff was entitled to damages, if he had sustained any, for the breaking and entering into and occupation of his lands by the defendants, in an action of trespass, but for the provisions of the plank road laws already cited, which created, primarily, a new forum for trying the question, with the right of appeal to our Common Law Courts. In the *Lehigh Bridge Company* vs. *The Lehigh Coal and Navigation Company*, 4 Rawle, 9, the Court held "that the acts for assessing damages done by the improvement of the river Lehigh, in providing a remedy for injuries sustained by the construction of the works, provide for nothing that was not remediable at common law, and on the other hand, the statutory remedy extends to every common law injury."

When the present cause came into court, the issue was made up by the plaintiff declaring in trespass *quare clausum fregit*, and the defendants pleading thereto, according to the course pursued in *The Philadelphia, Germantown and Norristown Railroad Company* vs. *Smith*, 2 Wh. 273, and approved by the Supreme Court. The verdict, of course, was in damages.

But it is said that the question has been settled in the case of *The Norristown Railroad Company* vs. *Johnston*, 2 Wh. 375, and *Herbein* vs. *The Reading Railroad Company*, 9 Watts, 272. These two cases, whether rightly or wrongly decided, do not reach the present case, so far as regards the costs accrued in Court. In the first of these cases the Court held that where there was no appeal taken from the finding of the viewers, there were no costs other than the pay of the jurors, which the Company was bound by the statute in that case to pay, and that there ought to be none, for the viewers decide on their own view of the premises, and not by the opinions of witnesses, and the second is decided on the authority of the first. With all due deference to the learned Court who decided them, we have doubts about the correctness of the decision, and presume that the Court's attention was not directed to the distinction taken by the court in the case of *Witham* vs. *Hill and others*, between cases in which the right to damages was established by statute, and those in which the remedy is only modified.

In the case of *The Schuylkill Navigation Company* vs. *Kittera*, 2 Rawle, 444, an appeal from the decision of the viewers to the Court of Common Pleas, the viewers had awarded the plaintiff below $1200, and on the trial in court, he recovered $800. The court held that the question of costs, by the terms of the act, which provided "That either party may appeal to the court within thirty days after such report may have been filed in the Prothonotary's office of the proper county, *in the same manner as appeals are allowed in other cases*, was to be regulated by the provisions of the then existing arbitration law, and that as the plaintiff had not eventually recovered as much as the viewers gave him, he could recover no costs since the appeal, as settled in *Landis* vs. *Shaeffer*, 4 S. & R., 196.

We find a principle settled in this case from 2 Rawle, 444, which we think governs the case under consideration. The language of the Plank Road Law, when speaking of cases in which an appeal is taken to the Common Pleas is, that they are "*to be determined as other cases of appeal from judgments of justices of the peace.*"

The Act of 9th April, 1833, provides that "the costs on appeals from justices of the peace shall abide the event of suit, and be paid

by the unsuccessful party, as in other cases," provided that if the plaintiff be the appellant he shall pay all costs which may accrue on the appeal, if, in the event of the suit he shall not recover a greater sum, or a more favorable judgment than was rendered by the justice," &c., with a provision also, that if the defendant, on the trial before the justice or referees, offer to confess a judgment for what he admits to be due, and the plaintiff will not accept it, he shall be excused from payment of costs, and recover his costs against the plaintiff, unless the latter, in court, recover more than the amount admitted to be due by the defendant.

In cases of appeal from awards of arbitrators, the liabilities of the parties for costs subsequently to the appeal, was regulated by the condition of the recognizance into which the parties entered, under the act of 16th June, 1836. But the act of 12th July, 1842, abolishing imprisonment for debt, abolished also all recognizances of special bail, and with it all the special provisions in the arbitration law as to costs, and consequently, whenever a plaintiff, after appeal, recovers a sum that would carry costs, although it were less than the sum awarded by the arbitrators, he is entitled to costs. *Remely* vs. *Kuntz*, 10 Barr, 180; *Cameron* vs. *Paul*, 1 Jones, 277.

By the act of 20th March, 1845, (Brightly, 48, pl. 41,) it is provided "In lieu of the bail heretofore required by law in the cases herein mentioned, the bail, in cases of appeal from the judgments of aldermen and justices of the peace, and from awards of arbitrators, shall be bail absolute in double the probable amount of costs accrued and likely to accrue in such cases, with one or more sureties conditioned for the payment of all costs accrued, or that may be legally recovered in such cases against the appellants."

Whether we look at the case under the provisions of the Statute of Gloucester, or under our acts of Assembly, regulating proceedings before justices and arbitrators, and appeals from them, we are of opinion that the plaintiff is entitled to recover costs. We, therefore, discharge the rule, and direct judgment to be entered for plaintiff, upon the verdict, with costs.

Messrs. *W. H. Dimmick & Crane*, for Plaintiff.

Messrs. *Jessup & Walters*, for Defendant.